

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: MIDDLETOWN SQUARE LLC

FILE NO.: UST 2015-51-00644
and SR 2016-7

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The properties are located at 533 Broadway, Assessor's Plat 6, Lot 332 in the city of Newport and at 7 West Main Road, Assessor's Plat 108SW, Lot 148 in the town of Middletown (the "Properties"). The Properties includes a former service station and an underground storage tank system (the "Facility").
- (2) The Respondent owns the Properties, taking title on or about 16 September 2013.
- (3) 533 Broadway LLC previously owned the Properties (the "Former Owner").
- (4) Underground storage tanks ("USTs" or "tanks") are installed on the Properties, which tanks are/were used for storage of petroleum products and which are subject to the DEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (5) The Facility is registered with the DEM in accordance with the DEM's UST Regulations and is identified as UST Facility No. 00644.
- (6) The USTs are registered with DEM as follows:

UST ID No.	Capacity	Product Stored
002	8,000 gallons	Gasoline
004	8,000 gallons	Gasoline
006	8,000 gallons	Gasoline
009	1,000 gallons	Used Oil
010	1,000 gallons	No. 2 Heating Oil

Remediation Issues

- (7) On 24 November 2006, the DEM received a Notification of Release of petroleum products on the Properties from Lessard Environmental, Inc. ("LEI") on behalf of the Former Owner. LEI reported that laboratory analysis of a soil sample obtained from beneath the service bays within the former service station at the Facility revealed a concentration of total petroleum hydrocarbons ("TPH") at 5,020 parts per million ("ppm"), which exceeded the criteria set forth in the DEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the "Remediation Regulations").
- (8) On 29 March 2007, the DEM received a Site Investigation Report ("SIR") of the Properties from LEI on behalf of the Former Owner. LEI reported that laboratory analysis of soil samples obtained from two soil borings on the Properties revealed concentrations of arsenic (38.5 ppm and 34.3 ppm) and beryllium (0.553 ppm and 0.514 ppm), which exceeded the criteria set forth in the DEM's Remediation Regulations.
- (9) On 13 February 2008, the DEM received a SIR Addendum from LEI on behalf of the Former Owner. LEI reported that:
 - (a) Laboratory analysis of 7 additional soil samples obtained from the Properties revealed concentrations of arsenic that ranged from 12.8 ppm to 34.2 ppm, which exceeded the criteria set forth in the DEM's Remediation Regulations; and
 - (b) Laboratory analysis of groundwater samples obtained from 2 monitoring wells installed on the Properties revealed concentrations of TPH of 14.9 ppm and 43.9 ppm.
- (10) On 3 August 2011, the DEM issued an Order of Approval (the "OA") to the Former Owner. The OA required specific actions to remediate the groundwater contamination at the Properties.
- (11) On 27 September 2012, the DEM issued a Remedial Approval Letter (the "RAL") to the Former Owner. The RAL required specific actions to remediate the soil contamination at the Properties.
- (12) On 19 July 2013, LEI submitted a Closure Report (the "Closure Report") to the DEM on behalf of the Former Owner. The Closure Report described the actions that were taken to comply with the OA and RAL.
- (13) On 30 July 2013, the DEM issued a comment letter on the Closure Report (the "Closure Report Comments").

- (14) On 2 September 2013, LEI submitted a letter to the DEM in response to the Closure Report Comments. LEI stated that:
- (a) The Properties were in the process of being sold to the Respondent;
 - (b) The Respondent was aware of the Closure Report Comments;
 - (c) The Respondent was aware that upon taking title to the Properties it was responsible for complying with the DEM's Remediation Regulations; and
 - (d) The Respondent intends to redevelop the Properties and submit remedial actions to the DEM for approval.
- (15) On 30 April 2015, the DEM issued a Letter of Responsibility ("LOR") by certified mail to the Respondent. The LOR required the Respondent to bring the Properties into compliance with the DEM's Remediation Regulations by 1 June 2015. The LOR was delivered on 4 May 2015.
- (16) On 10 June 2015, GZA GeoEnvironmental, Inc. ("GZA") sent electronic correspondence to the DEM on behalf of the Respondent. GZA stated that it intended on addressing the LOR for the Respondent.
- (17) As of the date of this Notice of Violation (the "NOV"), the DEM has failed to provide any documents to the DEM and has failed to bring the Properties into compliance with the DEM's Remediation Regulations.

UST Issues

- (18) On or about 11 December 2011, UST Nos. 002, 004 and 006 were evacuated of their contents by the Former Owner.
- (19) On 1 June 2015, the DEM issued a Letter of Noncompliance ("LNC") to the Respondent advising the Respondent that the DEM determined that UST Nos. 002, 004, 006 and 009 were abandoned (the "Abandoned USTs") and that the USTs were required to be removed from the ground and permanently closed in accordance with the DEM's UST Regulations.
- (20) On 26 June 2015, GZA sent electronic correspondence to the DEM in response to the LNC. GZA stated that the Respondent was requesting an extension to 26 June 2016 to comply with the LNC.
- (21) On 26 June 2015, the DEM sent electronic correspondence to GZA allowing the Respondent to request approval from DEM for a 6 month temporary closure of the Abandoned USTs in accordance with the DEM's UST Regulations.
- (22) As of the date of the NOV, the Respondent has neither sought nor obtained the DEM's approval for temporary closure of the Abandoned USTs in accordance with the DEM's UST Regulations.

- (23) As of the date of the NOV, the Respondent has failed to permanently close the Abandoned USTs in accordance with the DEM's UST Regulations. The USTs remain in place on the Properties in an abandoned state.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's Remediation Regulations, Rule 4.02** – requiring responsible parties to investigate unpermitted releases of hazardous materials and take remedial action in accordance with the DEM's Remediation Regulations.
- (2) **DEM's Remediation Regulations, Rules 11.01 and 11.02** – requiring performing parties to complete all remedial actions required by the DEM.
- (3) **DEM's UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (4) **DEM's UST Regulations, Rule 13.05** – requiring the permanent closure of any USTs that have been removed from service for more than 180 days or are abandoned.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 15 days of receipt of the NOV**, submit to the DEM written verification that a qualified consultant has been retained to prepare a Remedial Action Work Plan (the "RAWP") in accordance with Section 9.0 of the DEM's Remediation Regulations to bring the Property into compliance with the DEM's Remediation Regulations.
- (2) **Within 60 days of receipt of the NOV**, submit to the DEM a proposed RAWP prepared by the qualified consultant that shall include, at a minimum, the following:
 - (a) A response to each comment contained in the Closure Report Comments;
 - (b) An encapsulation plan to prevent human contact with jurisdictional soils on the Property in accordance with Section 12.0 of the DEM's Remediation Regulations;
 - (c) A plan to complete the required groundwater monitoring that acknowledges the possibility that a groundwater treatment plan may be required if the analytical data suggests that it is warranted. If any of the 5 pre-existing monitoring wells cannot be found, replacement wells shall be proposed to ensure an adequate investigation of groundwater quality;

- (d) A proposed Environmental Land Use Restriction;
 - (e) A proposed Soil Management Plan including a legal description and site figure depicting the proposed capping layout, in accordance with Section 12.0 of the DEM's Remediation Regulations; and
 - (f) A proposed schedule to complete the required remedial actions and to submit groundwater monitoring reports.
- (3) Upon receipt of the DEM's written approval of the RAWP, perform all remedial actions specified in the RAWP, as per Sections 10.0 and 11.0 of the DEM's Remediation Regulations.
 - (4) Submit quarterly site status reports to the DEM until compliance or interim compliance with the DEM's Remediation Regulations is achieved.
 - (5) **Within 90 days of receipt of the NOV**, submit a permanent closure application to the DEM to remove the Abandoned USTs in full compliance with Section 13.00 of the DEM's UST Regulations and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
 - (6) **Within 30 days of the removal of the Abandoned USTs**, submit to the DEM a Closure Assessment Report prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM's UST Regulations, the DEM's *UST Closure Assessment Guidelines* and Section 13.00 of the DEM's OPC Regulations.
 - (7) **Within 30 days of the removal of the Abandoned USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the DEM in accordance with Section 13 of the DEM's OPC Regulations.
 - (8) **Within 60 days of receipt of written notification from the DEM to conduct a site investigation of the Property**, retain a qualified environmental consultant to perform the site investigation and submit a Site Investigation Report to the DEM within the time frame specified by the DEM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations.
 - (9) **Within 60 days of receipt of written notification from the DEM to submit a Corrective Action Plan (the "CAP")**, retain a qualified consultant to submit a proposed CAP to the DEM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by the DEM.

- (10) The schedules, reports and other documents that the Respondent is required to submit to the RIDEM in accordance with Section D above are subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within a reasonable period of time to be proposed by the DEM, but within no fewer than 14 business days of receiving a notification of deficiencies, the Respondent shall submit to the DEM revised schedules, reports, documents or additional information necessary to correct the deficiencies

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$41,301

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM - Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, RI 02908-5767.
- (3) Penalties assessed against the respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with the NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);

- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 4TH Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esq.
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) Original signed copies of the NOV are being forwarded to the city of Newport and the town of Middletown, wherein the Properties are located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Sections 42-17.1-2 (31) and 23-19.1-33, as amended.
- (7) The NOV does not preclude the DEM from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Middletown Square LLC
c/o Angelo R. Marocco, Esq., Registered Agent
1200 Reservoir Avenue
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
<i>Programs:</i>	<i>OFFICE OF COMPLIANCE AND INSPECTION, UST AND SITE REMEDIATION</i>
<i>File Nos.:</i>	<i>UST 2015-51-00644 and SR 2016-7</i>
<i>Respondent:</i>	<i>Middletown Square LLC</i>

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) and (2) – Failure to Investigate and Remediate Release	Type I (\$25,000 Max. Penalty)*	Major	\$18,750	1 violation	\$18,750
C (3) and (4) – Abandonment of USTs	Type I (\$25,000 Max. Penalty)*	Major	\$18,750	1 violation	\$18,750
SUB-TOTAL					\$37,500

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
<p>Economic benefit of noncompliance identified by the DEM for failing to permanently close the USTs.</p> <p>The one-time non-depreciable expense is the average cost to remove multiple USTs at typical facility.</p> <p>The economic benefit was calculated by utilizing an EPA computer model entitled "BEN" that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status C-Corporation • Filing Status C-Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$25,000 • Annual Expense \$0 • First Month of Non-Compliance 1 April 1 2014 • Compliance Date 1 January 2017 • Penalty Due Date 1 December 2016 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate N/A 	<p>\$3,801</p>
SUB-TOTAL		\$3,801

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
<p>A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$41,301

PENALTY MATRIX WORKSHEET

CITATION:	Failure to Investigate and Remediate Release
VIOLATION Nos.:	C (1) and (2)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to investigate and remediate a confirmed hazardous material release on the properties, as is required by the DEM's Remediation Regulations. The hazardous materials present on the properties present a threat to public health and safety and the environment. The requirements to investigate and take remedial action on hazardous material releases are of significant importance to the regulatory program and protecting public health and safety and the environment.
- (B) **Environmental conditions:** The properties are located in a densely developed area with numerous potential receptors including residential and commercial properties. The properties are located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The properties are located within 550 feet of a surface water protection area for the city of Newport's drinking water supply and a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the properties. The properties are located within the Coastal Aquidneck watershed and within 2,400 feet of freshwater wetlands associated with Bailey Brook and Green End Pond.
- (C) **Amount of the pollutant:** Laboratory analysis has confirmed that arsenic is present in soils at the properties at concentrations up to 5 times the *Residential Direct Exposure Criterion* and that TPH is present in soils at the properties at concentrations up to 10 times the *Residential Direct Exposure Criterion*. TPH has been detected in groundwater samples obtained from the properties at concentrations that the DEM believes warrant further investigation and/or remediation.
- (D) **Toxicity or nature of the pollutant:** Arsenic is a toxic metal that is a known human carcinogen, however, it does naturally occur in native soils. Petroleum hydrocarbons are capable of causing significant, widespread soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** 3 years - the Respondent has been non-compliant since taking title to the properties in September 2013.
- (F) **Areal extent of the violation:** The properties have an area of 0.38 acres.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance when it assumed the role of a responsible party upon taking possession of the properties. The Respondent has taken no action to mitigate the non-compliance despite receiving written correspondence from the DEM, which required that it do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** As owner of the properties, the Respondent had full control over the occurrence of the violation. The investigatory and remedial responsibilities for owners of contaminated property are clearly established in the DEM's Remediation Regulations. Upon information and belief, the Respondent was notified of the existing hazardous material releases, by the former owner of the properties, prior to taking title to the properties.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$18,750	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of USTs

VIOLATION Nos.: C (3) and (4)

TYPE

X **TYPE I**
DIRECTLY related to protecting health, safety, welfare or environment.

TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent has maintained USTs in an abandoned state. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. Abandoned USTs present a threat to the environment if they are not completely evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment. Prohibiting the abandonment of USTs is of significant importance to the regulatory program.
- (B) **Environmental conditions:** The properties are located in a densely developed area with numerous potential receptors including residential and commercial properties. The properties are located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The properties are located within 550 feet of a surface water protection area for the city of Newport's drinking water supply and a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the properties. The properties are located within the Coastal Aquidneck watershed and within 2,400 feet of freshwater wetlands associated with Bailey Brook and Green End Pond.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products and used oil are capable of causing significant, widespread soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** 3 years - the Respondent has maintained the USTs in an abandoned state since purchasing the properties on 17 September 2013. Upon information and belief, the USTs were removed from service before 11 December 2011 by the former owner of the properties.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by permanently closing the USTs upon taking possession of the properties. The Respondent has yet to mitigate the non-compliance despite receiving written correspondence from the DEM, which required that it do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** As owner of the properties, the Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. Upon information and belief, the Respondent was notified of the presence of abandoned USTs by the former owner of the properties.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$18,750	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250